SUPREME COURT OF INDIA SLSCI 58

Equivalent citations: AIR 2000 SC 3191, 2000 (6) ALT 31 SC, 2000 (7) SCALE 161

Bench: M Rao, K Balakrishnan

Makineni Venkata Sujatha vs Land Reforms Tribunal And Anr. on 17/10/2000

JUDGMENT

M. Jagannadha Rao, J.

1. The Special Leave Petition (C) No. 15354/2000 was dismissed at the stage of admission by an order dated 29-9-2000 after hearing learned Senior counsel for the petitioner. It was stated in that order that reasons would follow later. The following is the reasoned order.

2. The petitioner is the daughter of the 2nd respondent. The 2nd respondent had filed a declaration under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Act No. 1 of 1973). The notified date under the Act with respect to which the ceiling of a declarant for his family unit had to be determined was 1-1-75. The 2nd respondent filed a declaration on 11-4-1975 (L.C.C. 2516, 2517/KDK/75). The petitioner was minor as on 1-1-75 and she was included in the family unit of her father, the declarant. It was determined that the father's family unit had excess land to be surrendered. At that stage, the petitioner filed an application before the Land Reforms Tribunal in 1987 in the land ceiling proceedings pertaining to her father claiming that by virtue of Section 29A as introduced by the A.P. Amendment Act 13/ 86 to the Hindu Succession Act (Act 30/56) as inserted w.e.f. 5-9-85, the petitioner had become a coparcener being unmarried on that date (she got married on 26-8-86), and therefore had equal rights as a son. It was contended that her father's holding would therefore get diminished and he need not have to surrender excess land. Alternatively, she also relied on Section 4A introduced in Andhra Pradesh Land (Ceiling on Agricultural Holdings) Act, 1973 by the Andhra Pradesh Amendment Act 10 of 1977 w.e.f. 1-1-75 claiming that she was in the position of a major son and was entitled to the share of a major son. It was contended that to that extent, the father would be entitled to an extra unit and need not have to surrender any excess land.

3. These two contentions were rejected by the Land Reforms Tribunal on 20-5-88, and on appeal by the Appellate Tribunal in LRA/88 on 23-3-94. The Civil Revision Petition 1957/94 filed by her was dismissed on 28-6-2000 by the High Court. This special leave petition was preferred against the said order.

4. We shall deal initially with the contention based on Section 29A introduced into the Hindu Succession Act, 1956 by the AP Amendment of 1986. The Andhra Pradesh Land Ceiling Act (Act 1 of 1973) Act was published in Andhra Pradesh Gazette on 1-1-73. Under the Act, the determination of the retainable area of agricultural land was to be done with reference to the land held by the 'family unit' on 1-1-75. The 'family unit' was defined in Section 2(f) as comprising the individual, his or her spouse or spouses and their minor sons and their unmarried minor daughters. The petitioner before us was a member of the family unit as she was an unmarried minor daughter of the 2nd respondent as on 1-1-75. The declarant, her father under Section 8 was obliged to declare the total land held by himself and those lands held by other members of the family unit. The excess land was computed in respect of her father's family unit under Section 9 of the Act and the father had to surrender the same as provided in Section 10. That excess land would vest in the State free of encumbrances under Section 11.

5. Under the Land Reforms Act, 1973 if the family property comprised ancestral or coparcenary property of a Hindu, and if the declarant had no major sons, the entire extent of the said property was liable to be shown in the declaration together with any separate property held by the declarant or other members of the family unit. If on the other hand, there was (say) a major son as on 1-1-75 entitled to a share in the ancestral or coparcenary property then the declarant was to declare his share in the said property along with any separate property held by himself or other members of the family unit.

6. Now admittedly, the petitioner before us was a minor daughter of the declarant as on 1-1-1975. She had no duty nor a right to file a separate declaration soon after 1-1-1975. She was part of the father's family unit. That was why her father filed the declaration.

7. Section 29A was introduced by the A.P. Act of 1986 into the Hindu Succession Act, 1956 w.e.f. 5-9-85. It reads as follows:

Section 29-A: Equal Rights to daughter in Coparcenary property :

Notwithstanding anything contained in Section 6 of this Act :

(1) in a Joint Hindu Family government by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allotable to a son;

Provided that the share which a predeceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased child of the pre-deceased son on of the pre-deceased daughter. Provided further that the share allotable to the pre-deceased child of a predeceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or of the predeceased daughter as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of Clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) Nothing in Clause (ii) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of the Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

8. Relying on the language of Section 29A, it was contended by Sri P.P. Rao, learned senior counsel for the petitioner that under Section 29A, a right by birth was conferred on a daughter as a coparcener in Joint Hindu Family notwithstanding anything in Section 6 of the Hindu Succession Act, 1956. If on the date 5-9-85 when Section 29A was introduced, any joint family property was in the hands of her father's Joint family, she would get a right to a share therein and from her birth and hence the same could not be surrendered as having been treated as excess land as on 1-1-75. The section specifically stated that it was a right by birth. Under Sub-clause (iv), nothing in Clause (ii) would apply to a daughter married prior to or to a partition which had been effected prior to the Amendment i.e. prior to 5-9-85. Counsel contended that therefore her share in the joint family property was to be deducted from her father's holding as on 1-1-1975 or at any rate from the excess land.

9. In the order under appeal before us, the judgment of the Division Bench of the Andhra Pradesh High Court in Utukuri Sarat Kumar v. Authorised Officer was relied upon. That judgment, which was dealing with similar facts, negatived the contention based on Section 29A as introduced into the Hindu Succession Act, 1956 in 1986 by the Andhra Pradesh Legislature, seeking a deduction of the share of the daughter from the father's family unit as on 1-1-75. The High Court held that the incidence of coparcenary began from 5-9-85. It also held that Section 29A could only override Section 6 of the Hindu Succession Act, 1956 and would not override the provisions of the Andhra

Pradesh Land Reforms Act, 1973. We are in entire agreement with the view expressed in the said judgment for the following reasons.

10. Now, the declarant (2nd respondent) who is the father of the petitioner, was having excess land as on 1-1-1975. The petitioner was a minor daughter on that date and had neither a duty nor a right to file a declaration soon after 1975, within the prescribed period. That excess of her father's unit had to be computed under the Act and when computed, was liable to be surrendered to the State. The delay in the determination of the excess or in surrender proceedings would not affect the right of the State to this excess land as on 1-1-75. Section 29A of the Hindu Succession Act, 1956 (as amended) conferred a right, on the unmarried daughter as on 5-9-85 in the Hindu Joint Family property with the incidence of right by birth. But, so far as the determination of excess land of the father is concerned, the relevant date is 1-1-1975 and on that day, the petitioner was a minor and the fact that on a later date, viz. 5-9-85, the sharers in the Hindu Joint family increased and acquired a right to a share with incidence of coparcenary right or right by birth, would not, in our opinion, have any bearing on the excess in the father's holding as on 1-1-1975, which only remained to be computed. If his family unit was in excess, as on 1-1-75 the excess had to be surrendered to the State. The subsequent event of the sharers increasing was not relevant. Thus, Section 29A introduced w.e.f. 5-9-85 would not have the effect of taking out any land from out of the excess land computed or to be computed as against the father as on 1-1-1975. We are in agreement with the decision of the High Court in Utukuri Sarat Kumar v. Authorised Officer.

11. Connected with the point under Section 29A, Section 18 of the AP Land Reforms Act was relied upon. Section 18 of the Act deals with future acquisition. In our view, it has also no bearing on the excess land held by the father as on 1-1-1975. It may be that if any member of a family unit as on 1-1-1975, later on acquires property and comes to hold excess land, a declaration may have to be filed and in that event, the date 1-1-1975 would get shifted to the date of such acquisition, for purposes of determination of the excess area. Assuming that the daughter when she became a major and also became entitled to a right in property and was obliged to file a declaration on or after 5-9-85, that would not alter the position as on 1-1-1975 so far as the father's family unit as on 1-1 -75 was concerned, inasmuch as she was a member of the family unit on that date, vis-a-vis her father. The excess land of the father as on 1-1-1975 would remain the same and would not suffer any diminution on account of the subsequent event, namely, the right acquired by the daughter under Section 29A. The reason is that Section 29A does not alter the factual position that she was a minor as on 1-1-75.

12. So far as the second contention based on Section 4A of the Andhra Pradesh Reforms Act as introduced in 1977 is concerned, there are no merits in the said contention also. The relevant provisions of Section 4A introduced in 1977 are as follows:

Section 4A: Increase of ceiling area in certain cases: Notwithstanding anything in Section 4, where an individual or an individual who is a member of a family unit, has one or more major sons any

such major son either by himself or together with other members of the family unit of which he is a member, holds no land or holds an extent of land less than the ceiling area, then, the ceiling area, in the case of the said individual or the family unit of which the said individual is a member computed in accordance with Section 4, shall be increased in respect of each such major son by an extent of land equal to the ceiling area applicable to such major son or the family unit of which he is a member, or as the case may be, by the extent of land by which the land held by such major son or the family unit of which he is a member falls short of the ceiling area. Section 4A was introduced into the Land Reforms Act w.e.f. 1-1-1975.

13. Now the effect of Section 4A was that if the father - declarant had major sons on 1-1-1975 (who were outside the family unit), the father's entitlement got enlarged by as many family units as he had major sons as on 1-1-1975, if they were not holding any property. In case any of the major sons had a right in some property of their own or had a share in joint family property as on 1-1-1975, and if his holding was less than one standard holding, then the balance of the deficiency would get added to the permissible holding of the father.

The effect of Section 4A has been recently considered by this Court in Kancherla Madhusudhana Rao v. State of Andhra Pradesh . That being the import of Section 4A, it has no bearing on the facts of the case and does not increase the father's retainable land as on 1-1-75 beyond one unit.

14. Section 4A when it was introduced in 1977 by amendment to the Land Reforms Act w.e.f. 1-1-1975, it was applicable only to cases of major sons as on 1-1-1975. It did not apply to major daughters and even if there were major daughters on 1-1-1975 that was of no benefit to their father. The fact remains that as on 1-1-1975, the petitioner was a minor daughter and even assuming that the principle under the General Clauses Act that a 'male' includes a 'female' could apply to Section 4A (a point which we need not decide so far as Section 4A is concerned), that would not help the father and the father's family unit would not therefore get any extra entitlement because the daughter was not a major on 1.1.1975. It must be noted that Section 29A would not nullify the fact that the petitioner was a minor on 1-1-1975. Thus, the plea based on Section 4A has not merit.

15. Thus, both contentions stand rejected.

16. These are the reasons for dismissal of the Special Leave Petition on 29-9-2000.